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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/763,752

01/22/2004

Kevin James Cherkauer

BEA9-2003-0019US1

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INTELLECTUAL PROPERTY LAW OFFICES
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EXAMINER

LEWIS, CHERYL RENE A

ART UNIT

PAPER NUMBER

2167

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/11/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/763,752

Applicant(s)

CHERKAUER ET AL.

Examiner

Cheryl Lewis

Art Unit

2167

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-6 is/are allowed.
- 6) ☒ Claim(s) 7-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/26/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is in response to the applicants' communication received on October 26, 2006.
2. Claims 1-20 are presented for examination.
3. Applicants' arguments with respect to claims 7-20 have been considered but are moot in view of the new grounds of rejection.

INFORMATION DISCLOSURE STATEMENT

4. The information disclosure statements filed on October 26, 2006, complies with the provisions of MPEP § 609. They have been placed in the application file, and the information referred to therein has been considered as to the merits.

Drawings

5. The objection to the drawings cited in the previous office action dated August 7, 2006 is hereby withdrawn.

Claim Objections

6. The claim objection for duplicate claims to claims 9, 10, 11, 12, 15, 16, 17, and 18 cited in the previous office action dated August 7, 2006 is hereby withdrawn.

Allowable Subject Matter

7. Claims 1-6 are allowed.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 7, 8, 14, and 20 recite the limitation "an order calculated" in the specification, paragraph 0020 (taken from the Publication No.: 20050165798) . However, in the specification the terminology for "an order calculated" does not provide a detailed description for calculating an order based on extents lists. Claims 7, 8, 14, and 20 include "an order calculated" as a basis of a re-ordering step for the extents lists. Again, the only section of the specification that mentions "an order calculated" is paragraph 0020, summary of the invention. There is insufficient antecedent basis for this limitation in the claims.

10. Claims 7, 8, 14, and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim limitations for claims 7, 8, 14, and 20 recite "an order calculated".
What is this order and how is this order being calculated?

Therefore, dependent claims 9-13 and 15-19 are also rejected as being depended on the above rejected independent claims.

Claim Objections

11. Claim 20 is objected to because of the following informalities:

The preamble of independent claim 20 recites "a computer program, embodied on a computer readable storage medium: the computer program comprising". The examiner suggests that the applicants should kindly consider amending the preamble of independent claim 20 to further include '...the computer program executed on a computing device comprising'. The examiner suggests this change to the preamble because the preamble is stating that the 'computer program' per se comprises the entire embodiment of independent claim 20. The execution of the 'computer program' must be implemented by a 'computing device' (hardware) in an effort to make the computer program and its code executable. The 'computer program' alone cannot cause and/or implement the actual computerized execution of this program. Appropriate correction is required.

NAME OF CONTACT

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Lewis whose telephone number is (571) 272-4113. The examiner can normally be reached on 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cottingham can be reached on (571) 272-7079. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Art Unit: 2167

(571) 273-4113 (Use this FAX #, only after approval by Examiner, for "INFORMAL" or "DRAFT" communication. Examiners may request that a formal paper/amendment be faxed directly to them on occasions.).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist/ Technology Center (571) 272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Cheryl Lewis
Patent Examiner
January 3, 2007